

E-filing

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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

ADR

12 ROGELIO SERRATO, DECEASED,
13 THROUGH HIS SUCCESSORS IN
14 INTEREST, JULIAN SERRATO and
15 ISRAEL SERRATO, minors, by and
16 through their grandmother and Next
17 Friend, LISA MAGDALENO; and JULIAN
18 SERRATO AND ISRAEL SERRATO, by
19 and through their Next Friend, LISA
20 MAGDALENO, individually.

21 Plaintiffs,

22 vs.

23 MONTEREY COUNTY, a public entity,
24 SHERIFF SCOTT MILLER, individually
25 and in his official capacity; CAPTAIN
26 CHARLES MONARQUE, individually and
27 in his official capacity; COMMANDER
28 KEVIN OAKLEY, individually; SERGEANT
GARRETT SANDERS, individually;
SERGEANT JOSEPH BANUELOS,
individually; SERGEANT RANDY
RAGSAC, individually; DETECTIVE AL
MARTINEZ, individually; DEPUTY MARK
SIEVERS, individually, and DOES 1-10,
individually, jointly and severally.

Defendants.

No:

C11-03642

Hon.

COMPLAINT FOR DAMAGES,
DECLARATORY AND
INJUNCTIVE RELIEF, AND
DEMAND FOR JURY TRIAL

1 Plaintiffs, by and through their attorneys, HADDAD & SHERWIN, for their Complaint
2 against Defendants, state as follows:

3 **JURISDICTION**

4 1. This is a civil rights wrongful death/survival action arising from Defendants'
5 use of excessive force against ROGELIO SERRATO, who was killed when the Monterey
6 County Special Weapons and Tactics Team (SWAT) set fire to his home with a flash-bang
7 stun grenade on January 5, 2011, in the City of Greenfield, Monterey County, California.
8 This action is brought pursuant to 42 USC §§ 1983 and 1988, and the Fourth and
9 Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon
10 28 USC §§ 1331 and 1343(a)(3) and (4), and the aforementioned statutory and
11 constitutional provisions. Plaintiffs further invoke the supplemental jurisdiction of this Court
12 pursuant to 28 USC §1367 to hear and decide claims arising under state law. The amount
13 in controversy herein, excluding interest and costs, exceeds the minimum jurisdictional
14 limit of this Court.
15

16 **INTRADISTRICT ASSIGNMENT**

17 2. A substantial part of the events and/or omissions complained of herein
18 occurred in the City of Greenfield, Monterey County, California, and this action is properly
19 assigned to the San Jose Division of the United States District Court for the Northern
20 District of California.
21

22 **PARTIES AND PROCEDURE**

23 3. Plaintiff Lisa Magdaleno is the grandmother of decedent Rogelio Serrato's
24 sons, Julian Serrato, born 4/19/2008, and Israel Serrato born 8/06/2009. Lisa Magdaleno
25 and her grandsons are residents of the same household in the State of California. Plaintiff
26 Lisa Magdaleno brings these claims pursuant to FRCivP 17(c) as Next Friend for her
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1 grandsons, Julian and Israel Serrato, and in that capacity Lisa Magdaleno brings these
2 claims individually for Julian and Israel Serrato and on the minors' behalf as successors in
3 interest for the Estate of Rogelio Serrato, Deceased.

4 4. Lisa Magdaleno, as Next Friend for Julian and Israel Serrato brings these
5 claims pursuant to California Code of Civil Procedure sections 377.20 et seq. and 377.60
6 et seq. which provide for survival and wrongful death actions. The claims of Julian
7 Serrato, Israel Serrato, through their Next Friend, are also brought individually and on
8 behalf of Rogelio Serrato, Deceased, on the basis of 42 USC §§ 1983 and 1988, the
9 United States Constitution, and federal and state civil rights law.

10
11 5. Defendant Monterey County is a public entity established by the laws and
12 Constitution of the State of California, and owns, operates, manages, directs, and controls
13 the Monterey County Sheriff's Office ("MCSO") which employs other defendants in this
14 action.

15
16 6. Defendant Sheriff Scott Miller ("Miller") at all material times was employed as
17 Sheriff by Defendant Monterey County, and was acting within the course and scope of that
18 employment. As Sheriff, Defendant Miller was a policy-making official for Monterey County
19 with the power to make official and final policy for MCSO. Defendant Miller is being sued in
20 his individual and official capacities.

21
22 7. Defendant Captain Charles Monarque ("Monarque") at all material times was
23 employed as a law enforcement officer by Defendant Monterey County, and was acting
24 within the course and scope of that employment. As Captain and Acting Chief of the
25 Enforcement Operations Bureau, Defendant Monarque was a policy-making official for the
26 MCSO Enforcement Operations Bureau. Defendant Monarque is being sued in his
27 individual and official capacities.

1 8. Defendant Commander Kevin Oakley ("Oakley") at all material times was
2 employed as a law enforcement officer by Defendant Monterey County, and was acting
3 within the course and scope of that employment. Defendant Oakley is being sued in his
4 individual capacity.

5 9. Defendant Sergeant Garrett Sanders ("Sanders") at all material times was
6 employed as a law enforcement officer by Defendant Monterey County, and was acting
7 within the course and scope of that employment. Defendant Sanders is being sued in his
8 individual capacity.

10 10. Defendant Sergeant Joseph Banuelos ("Banuelos") at all material times was
11 employed as a law enforcement officer by Defendant Monterey County, and was acting
12 within the course and scope of that employment. Defendant Banuelos is being sued in his
13 individual capacity.

14 11. Defendant Sergeant Randy Ragsac ("Ragsac") at all material times was
15 employed as a law enforcement officer by Defendant Monterey County, and was acting
16 within the course and scope of that employment. Defendant Ragsac is being sued in his
17 individual capacity.

18 12. Defendant Detective Al Martinez ("Martinez") at all material times was
19 employed as a law enforcement officer by Defendant Monterey County, and was acting
20 within the course and scope of that employment. Defendant Martinez is being sued in his
21 individual capacity.. Defendant Sievers is being sued in his individual capacity.

22 13. Defendant Deputy Mark Sievers ("Sievers") at all material times was
23 employed as a law enforcement officer by Defendant Monterey County, and was acting
24 within the course and scope of that employment
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1 14. The true names and capacities of Defendants sued herein as DOES 1-10
2 ("DOE Defendants") are unknown to Plaintiffs, who therefore sue said Defendants by such
3 fictitious names, and Plaintiffs will seek leave to amend this complaint to show their true
4 names and capacities when the same are ascertained. Each DOE Defendant was an
5 employee/agent of Monterey County, the City of Monterey, or some other law enforcement
6 agency, and at all material times acted within the course and scope of that relationship.
7

8 15. Plaintiffs are informed and believe and thereon allege that each of the
9 Defendants sued herein was intentionally, recklessly, wrongfully, negligently or otherwise
10 responsible in some manner for the events and happenings as hereinafter described, and
11 proximately caused injuries and damages to Plaintiffs. Further, one or more DOE
12 defendants was at all material times responsible for the hiring, training, supervision, and
13 discipline of other defendants.
14

15 16. Plaintiffs are informed and believe, and thereon allege, that each of the
16 Defendants was at all material times an agent, servant, employee, partner, joint venturer,
17 co-conspirator, and/or alter ego of the remaining Defendants, and in doing the things
18 herein alleged, was acting within the course and scope of that relationship. Plaintiffs are
19 further informed and believe, and thereon allege, that each of the Defendants herein gave
20 consent, aid, and assistance to each of the remaining Defendants, and ratified and/or
21 authorized the acts or omissions of each Defendant as alleged herein, except as may be
22 hereinafter otherwise specifically alleged. At all material times, each Defendant was an
23 integral participant and was jointly engaged in tortious activity, resulting in the deprivation
24 of Plaintiffs' constitutional rights and other harm.
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19. Each Plaintiff herein timely and properly filed tort claims pursuant to Cal. Gov. Code § 910 et seq., and this action is timely filed within all applicable statutes of limitation.

11 GENERAL ALLEGATIONS

22. This Complaint concerns the MCSO's violent and ultimately deadly raid on a private residence at 228 San Antonio Drive, Greenfield, CA on the morning of January 5, 2011. MCSO Special Weapons and Tactics Team (SWAT) planned to assist the Monterey Police Department (MPD) with the service of a search warrant at the home of Mr. Serrato. The warrant authorized MPD to search for evidence connected with a shooting that occurred at the Mucky Duck bar in Monterey four days earlier. Rogelio Serrato was not in fact at the Mucky Duck on the night of the shooting and was in no way connected to that incident. Neither MCSO, nor any other law enforcement agency had sought or obtained an arrest warrant for Mr. Serrato in connection with that shooting. At all material times, Mr. Serrato was unarmed and Defendants had no particular information that he was armed.

1 23. Nonetheless, Defendant Monarque recommended that SWAT be activated
2 and informed Defendant Sheriff Miller of the mission. Defendants Sanders, Banuelos,
3 Oakley and Monarque formed and approved a tactical operations plan which included
4 using a stun grenade to scare Mr. Serrato out of his home.

5 24. At or around 9:23 a.m., MCSO SWAT members drove the "Bearcat," a
6 military-combat style tactical transport, along with a large armored truck and several other
7 SWAT vehicles to Mr. Serrato's home. Approximately two-dozen SWAT members, armed
8 with assault rifles and other automatic weapons, surrounded Mr. Serrato's home while a
9 Hostage Negotiation Team (HNT) shouted at him with a "thunder-hailer" megaphone
10 ordering him to surrender.

11 25. Although Mr. Serrato did not respond to the thunder-hailing, statements by
12 neighbors and relatives confirmed the SWAT members' belief that Mr. Serrato was inside
13 the residence. Defendants also received information that Mr. Serrato may have been
14 intoxicated, emotionally disturbed and unable to care for himself.

15 26. Without provocation or just cause, Defendants Sanders, Oakley, and
16 Monarque decided to launch a flash-bang stun grenade into Mr. Serrato's home. Per
17 earlier discussions, defendants planned to use the grenade not to secure the safety of the
18 SWAT members during a dynamic entry, but as a "scare tactic" to frighten "the target" into
19 exiting his home. Mr. Serrato had not threatened the officers in any way.

20 27. Defendant Sanders, who led the SWAT mission's tactical operations team,
21 obtained final approval to use the grenade from Defendant Monarque and Defendant
22 Oakley. The "Break and Rake" team approached the front window of Mr. Serrato's home,
23 whereupon Defendant Martinez broke the window with a wrecking tool and Deputy Sievers
24 threw the grenade into the living room. Defendant Banuelos, assistant team leader,
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1 accompanied the team to supervise the Break and Rake operation. Defendants Ragsac
2 and Banuelos also provided close cover for the Break and Rake team with their firearms.
3 All Defendants were integral participants in this operation and use of the grenade.

4 28. Defendant Sievers, acting in concert with his teammates, intentionally threw
5 the grenade either onto, underneath, between or beside two extremely flammable
6 polyurethane sofas.
7

8 29. Within minutes, Defendants observed dark black smoke and flames shooting
9 from the area where they had thrown the grenade. Defendant Banuelos and other SWAT
10 members heard Mr. Serrato's anguished cries and heard him breaking windows in the
11 residence. Defendant Banuelos shouted, "suspect!" and directed the SWAT members to
12 retreat into the Bearcat. Instead of attempting to extinguish the fire or rescue Mr. Serrato,
13 the Defendants pointed assault rifles into Mr. Serrato's home while waiting for the fire
14 department to arrive.
15

16 30. MCSO SWAT delayed the Greenfield Fire Department from fighting the blaze
17 because they had blocked the street entrance with a SWAT vehicle. The fire department
18 was not able to control the fire until more than 30 minutes had passed and Mr. Serrato had
19 succumbed to the smoke.
20

21 31. Fire Department efforts to resuscitate Mr. Serrato failed. MCSO SWAT
22 members' improper use of the flash-bang grenade and failure to control the ensuing fire
23 and/or rescue Mr. Serrato caused Mr. Serrato's tragic and unnecessary death.

24 32. On information and belief, Defendants Sievers and Martinez had started fires
25 with flash-bang grenades on multiple prior occasions. Defendants knew or must have
26 known that the improper use of a flash-bang grenade is likely to cause severe injury and/or
27 death.
28

1 33. Defendants failed to give any warning to Mr. Serrato before launching an
2 incendiary device into his home, even though a warning would have been feasible and
3 proper.

4 34. Defendants failed to carefully consider alternatives to using the grenade.

5 35. Defendants' use of the flash-bang stun grenade as a scare tactic was
6 contrary to its intended purpose as a distraction device. By throwing a grenade into a
7 home without immediately attempting a dynamic entry, Defendants violated generally
8 accepted law enforcement standards and increased the risk of death or injury to the
9 inhabitants.
10

11 36. Defendants failed to follow their training, law enforcement standards, and the
12 manufacturer's instructions and warnings, including but not limited to tossing the grenade
13 where it would be trapped between two extremely flammable polyurethane sofas.
14

15 37. At the time that Defendant Sievers launched the grenade, Mr. Serrato did not
16 pose a significant and immediate threat of death or serious physical injury to Defendants or
17 to anyone else.

18 38. Mr. Serrato, who was unarmed and in no way connected to the incident that
19 Police were investigating, never displayed any signs of aggression or threatened any
20 officer. He exhibited only panic and fear. The use of deadly force, including the use of the
21 grenade as described herein, was not justified or lawful under the circumstances.
22

23 39. Alternatively, or concurrently, the Defendants' own excessive and
24 unreasonable actions created a risk of harm to Mr. Serrato, created the situation in which
25 Defendants decided to use force, and caused an escalation of events leading to use of the
26 flash-bang grenade and the fire that claimed Mr. Serrato's life.
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1 40. Defendants' conduct herein, including but not limited to their decision(s) to
2 use excessive and unnecessary force to execute the search warrant, their ill-planned and
3 unjustifiable use of the flash-bang grenade, the reckless and improper manner in which
4 they deployed the flash-bang, and their failure to enter the home, attempt to extinguish the
5 fire they started and/or rescue Mr. Serrato, was contrary to generally accepted, reasonable
6 law enforcement procedures and tactics and caused the wrongful death of Mr. Serrato.

7
8 41. At all material times, and alternatively, the actions and omissions of each
9 defendant were intentional, wanton and/or willful, conscience shocking, reckless,
10 malicious, deliberately indifferent to Plaintiffs' rights, done with actual malice, grossly
11 negligent, negligent and objectively unreasonable.

12 42. As a direct and proximate result of each Defendant's acts and/or omissions
13 as set forth above, Plaintiffs sustained the following injuries and damages, past and future,
14 among others:

- 15 a. Wrongful death of Mr. Serrato;
- 16 b. Hospital and medical expenses;
- 17 c. Coroner's fees, funeral and burial expenses;
- 18 d. Loss of familial relationships, including loss of love, companionship,
19 comfort, affection, society, services, solace, and moral support;
- 20 e. Loss of economic support;
- 21 f. Violation of constitutional rights;
- 22 g. Mr. Serrato's loss of life, pursuant to federal civil rights law;
- 23 h. Mr. Serrato's conscious pain and suffering, pursuant to federal civil
24 rights law;
- 25 i. All damages and penalties recoverable under 42 USC §§ 1983 and
26 1988, and as otherwise allowed under California and United States
27 statutes, codes, and common law.
- 28

COUNT ONE

-- 42 USC §1983 --

**ALL PLAINTIFFS AGAINST DEFENDANTS MILLER, MONARQUE, OAKLEY,
SANDERS, BANUELOS, RAGSAC, MARTINEZ, SIEVERS, AND DOES 1-10**

43. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

44. By the actions and omissions described above, Defendants Miller, Monarque, Oakley, Sanders, Banuelos, Ragsac, Martinez, Sievers and DOES 1-10 violated 42 USC §1983, depriving Plaintiffs of the following clearly-established and well-settled constitutional rights protected by the Fourth and Fourteenth Amendments to U.S. Constitution:

- a. The right to be free from unreasonable searches and seizures as secured by the Fourth and Fourteenth Amendments;
- b. The right to be free from excessive and unreasonable force in the course of search or seizure as secured by the Fourth and Fourteenth Amendments;
- c. The right to be free from the use of unlawful deadly force as secured by the Fourth and Fourteenth Amendments;
- d. The right to be free of unlawful, reckless, deliberately indifferent, and conscience shocking deadly force as secured by the Fourteenth Amendment;
- e. The right to be free from deprivation of life without substantive due process and from state created danger as secured by the Fourteenth Amendment;
- f. The right to be free from wrongful government interference with familial relationships, and Plaintiffs' right to companionship, society and support of each other, as secured by the First, Fourth and Fourteenth Amendments, and to the extent secured by California Code of Civil Procedure §§ 377.20 et seq. and 377.60 et seq.

45. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs of rights described herein, knowingly, maliciously, and with conscious and reckless

1 disregard for whether the rights and safety of Plaintiffs (individually and on behalf of Mr.
2 Serrato) and others would be violated by their acts and/or omissions.

3 46. As a direct and proximate result of Defendants' acts and/or omissions as set
4 forth above, Plaintiffs sustained injuries and damages as set forth at paragraph 42, above.

5 47. The conduct of Defendants Miller, Monarque, Oakley, Sanders, Banuelos,
6 Ragsac, Martinez, Sievers and DOES 1-10 in their individual capacities, entitles Plaintiffs
7 to punitive damages and penalties allowable under 42 USC §1983 and Cal. Code of Civil
8 Procedure § 377.20 et seq. Plaintiffs do not seek punitive damages against municipal
9 Defendants.
10

11 48. Plaintiffs are also entitled to reasonable costs and attorney fees under 42
12 USC §1988 and applicable California codes and laws.

13
14 **COUNT TWO**
15 **- 42 USC §1983 -**
16 **ALL PLAINTIFFS AGAINST DEFENDANTS MONTEREY COUNTY,**
17 **SHERIFF SCOTT MILLER, CAPTAIN CHARLES MONARQUE, AND DOES 1-10**

18 49. Plaintiffs reallege each and every paragraph in this complaint as if fully set
19 forth here.

20 50. The unconstitutional actions and/or omissions of Defendants Monterey
21 County, Sheriff Scott Miller, and Captain Charles Monarque, as well as other officers
22 employed by or acting on behalf of Monterey County, on information and belief, were
23 pursuant to the following customs, policies, practices, and/or procedures of the MCSO,
24 stated in the alternative, which were directed, encouraged, allowed, and/or ratified by
25 policy making officers for Monterey County:

- 26 a. To use or tolerate the use of excessive and/or unjustified force, in
27 particular during the search of residential dwellings;
28 b. To misuse or tolerate the improper and dangerous misuse of flash-
bang grenades;

- c. To create unnecessary danger and risk of serious harm or death, with deliberate indifference, to occupants of residences being searched by law enforcement officers;
- d. To cover-up violations of constitutional rights by failing to properly investigate and/or evaluate officer involved shootings, by ignoring and/or failing to properly and adequately investigate and discipline unconstitutional or unlawful police activity, and by allowing, tolerating, and/or encouraging police officers to: file false police reports; make false statements; intimidate, bias and/or "coach" witnesses to give false information and/or to attempt to bolster officers' stories; and obstruct and/or interfere with investigations of unconstitutional or unlawful police conduct, by withholding and/or concealing material information;
- e. To allow, tolerate, and/or encourage a "code of silence" among law enforcement officers and police department personnel, whereby an officer or member of the department does not provide adverse information against a fellow officer or member of the department; and,
- f. To use or tolerate inadequate, deficient, and improper procedures for handling, investigating, and reviewing complaints of officer misconduct.

51. Defendants Monterey County, Sheriff Miller, and Captain Monarque failed to properly hire, train, instruct, monitor, supervise, evaluate, investigate, and discipline Defendants Captain Monarque, Commander Oakley, Sergeant Sanders, Sergeant Banuelos, Detective Martinez and Deputy Sievers and other MCSO officers, with deliberate indifference to Plaintiffs' constitutional rights, which were thereby violated as described above.

52. The unconstitutional actions and/or omissions of Defendants and other MCSO officers, as described above, were approved, tolerated and/or ratified by policy making officers for the MCSO. Plaintiffs are informed and believe, and thereupon allege, that Defendant Sheriff Miller was informed about the SWAT raid before it occurred and that the details of this incident have since been revealed to the authorized policy makers within Monterey County and MCSO, and that such policy makers have direct knowledge of the

1 fact that throwing a flash-bang stun grenade into Mr. Serrato's home was not justified
2 under the circumstances, but rather represented an unconstitutional display of
3 unreasonable, excessive and deadly force. Notwithstanding this knowledge, the
4 authorized policy makers within Monterey County and MCSO have labeled Mr. Serrato's
5 death "accidental," have approved of Defendants' tactical operation, and have made a
6 deliberate choice to endorse the SWAT members' excessive use of force. By so doing,
7 the authorized policy makers within Monterey County and MCSO have shown affirmative
8 agreement with the individual defendant officers' actions, and have ratified the
9 unconstitutional acts of the individual defendant officers.
10

11 53. The aforementioned customs, policies, practices, and procedures, the
12 failures to properly and adequately hire, train, instruct, monitor, supervise, evaluate,
13 investigate, and discipline, as well as the unconstitutional orders, approvals, ratification
14 and toleration of wrongful conduct by Defendants Monterey County, Sheriff Miller, and
15 Bureau Captain Charles Monarque, were a moving force and/or a proximate cause of the
16 deprivations of Plaintiffs' clearly-established and well-settled constitutional rights in
17 violation of 42 USC §1983, as more fully set forth in paragraph 44, above.
18

19 54. Defendants subjected Plaintiffs to their wrongful conduct, depriving Plaintiffs
20 of rights described herein, knowingly, maliciously, and with conscious and reckless
21 disregard for whether the rights and safety of Plaintiffs and others would be violated by
22 their acts and/or omissions.
23

24 55. As a direct and proximate result of the unconstitutional actions, omissions,
25 customs, policies, practices and procedures of Defendants, Plaintiffs sustained serious
26 and permanent injuries and are entitled to damages, penalties, costs and attorney fees as
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1 set forth in paragraphs 45-48, above, including punitive damages against Defendants
 2 Miller and Monarque.

3 **COUNT THREE**
 4 **-- VIOLATION OF CIVIL CODE §52.1 --**
 5 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS**

6 56. Plaintiffs reallege each and every paragraph in this complaint as if fully set
 7 forth here.

8 57. By their acts, omissions, customs, and policies, each Defendant acting in
 9 concert/conspiracy, and by threats, intimidation, or coercion, as described above, violated
 10 Plaintiffs' rights under California Civil Code §52.1, and the following clearly-established
 11 rights under the United States Constitution and the California Constitution:

- 12 a. The right to be free from unreasonable searches and seizures as
 13 secured by the Fourth and Fourteenth Amendments;
- 14 b. The right to be free from excessive and unreasonable force in the
 15 course of search or seizure as secured by the Fourth and
 16 Fourteenth Amendments;
- 17 c. The right to be free from the unreasonable use of deadly force as
 18 secured by the Fourth and Fourteenth Amendments;
- 19 d. The right to be free of unlawful, reckless, deliberately indifferent,
 20 and conscience shocking deadly force as secured by the
 21 Fourteenth Amendment;
- 22 e. The right to be free from deprivation of life without substantive due
 23 process and from state created danger as secured by the
 24 Fourteenth Amendment;
- 25 f. The right to be free from wrongful government interference with
 26 familial relationships, and Plaintiffs' right to companionship and
 27 society with each other, as secured by the First, Fourth and
 28 Fourteenth Amendments;
- g. The right to enjoy and defend life and liberty, acquire, possess and
 protect property, and pursue and obtain safety, happiness and
 privacy, as secured by the California Constitution, Article 1,
 Section 1;

- h. The right to life, liberty and property and not to be deprived of those without due process of law as secured by the California Constitution, Article 1, Section 7;
- i. The right to be free from unlawful and unreasonable seizure of one's person, including the right to be free from unreasonable or excessive deadly force, as secured by the California Constitution, Article 1, Section 13;
- j. The right to protection from bodily restraint, harm, or personal insult, as secured by Cal. Civil Code § 43.

58. As a direct and proximate result of Defendants' violation of California Civil Code §52.1 and of Plaintiffs' rights under the United States and California Constitutions, Plaintiffs sustained injuries and damages, and against each and every Defendant are entitled to relief as set forth above at paragraphs 45-48, including punitive damages against Defendants Miller, Monarque, Oakley, Sanders, Banuelos, Sergeant Ragsac, Detective Martinez, Deputy Sievers and DOES 1-10 in their individual capacities, including all damages and penalties allowed by California Civil Code §§ 52, 52.1, and California law, not limited to costs, attorneys fees, and civil penalties.

COUNT FOUR
-- NEGLIGENCE; PERSONAL INJURIES --
ALL PLAINTIFFS AGAINST ALL DEFENDANTS

59. Plaintiffs reallege each and every paragraph in this complaint as if fully set forth here.

60. At all times, each Defendant owed Plaintiffs the duty to act with due care in the execution and enforcement of any right, law, or legal obligation.

61. At all times, each Defendant owed Plaintiffs the duty to act with reasonable care.

62. These general duties of reasonable care and due care owed to Plaintiffs by all Defendants include but are not limited to the following specific obligations:

- a. to refrain from using excessive and/or unreasonable force against Mr. Serrato;
- b. to refrain from unreasonably creating the situation where force, including but not limited to deadly force, is used;
- c. to refrain from unreasonably creating danger or increasing Mr. Serrato's peril or risk of harm;
- d. to refrain from abusing their authority granted them by law;
- e. to refrain from violating Plaintiffs' rights guaranteed by the United States and California Constitutions, as set forth above, and as otherwise protected by law.

63. Additionally, these general duties of reasonable care and due care owed to Plaintiffs by Defendants include but are not limited to the following specific obligations:

- a. to properly and adequately hire, investigate, train, supervise, monitor, evaluate, and discipline their employees, agents, and/or law enforcement officers to ensure that those employees/agents/officers act at all times in the public interest and in conformance with law;
- b. to make, enforce, and at all times act in conformance with policies and customs that are lawful and protective of individual rights, including Plaintiffs'.
- c. to refrain from making, enforcing, and/or tolerating the wrongful policies and customs set forth at paragraph 50, above.

64. Defendants, through their acts and omissions, breached each and every one of the aforementioned duties owed to Plaintiffs.

65. As a direct and proximate result of Defendants' negligence, Plaintiffs sustained injuries and damages, and against each and every Defendant are entitled to relief as set forth above at paragraphs 45-48, including punitive damages against Defendants Miller, Monarque, Oakley, Sanders, Banuelos, Ragsac, Martinez, Sievers and DOES 1-10 in their individual capacities.

1 WHEREFORE, Plaintiffs respectfully request the following relief against each and
 2 every Defendant herein, jointly and severally:

- 3 a. compensatory and exemplary damages in an amount according to
 4 proof and which is fair, just and reasonable;
- 5 b. punitive damages under 42 USC §1983 and California law in an
 6 amount according to proof and which is fair, just, and reasonable;
- 7 c. all other damages, penalties, costs, interest, and attorney fees as
 8 allowed by 42 USC §§ 1983 and 1988, Cal. Code of Civ. Proc. §§
 9 377.20 et seq., 377.60 et seq., 1021.5, Cal. Civil Code §§ 52 et seq.,
 10 52.1, and as otherwise may be allowed by California and/or federal
 11 law;
- 12 d. Injunctive relief, including but not limited to the following:
 - 13 i. an order prohibiting Defendants and their police
 14 officers from unlawfully interfering with the rights of
 15 Plaintiffs and others to be free from unreasonable
 16 searches and seizures and excessive and
 17 unreasonable force;
 - 18 ii. an order requiring Defendants to institute and
 19 enforce appropriate and lawful policies and
 20 procedures for the safe use of flash-bang grenades;
 - 21 iii. an order prohibiting Defendants and their police
 22 officers from engaging in the "code of silence" as
 23 may be supported by the evidence in this case;
 - 24 iv. an order requiring Defendants to train all MCSO
 25 SWAT officers concerning generally accepted and
 26 proper tactics and procedures for the use of deadly
 27 force including the use of flash-bang stun grenades
 28 and this Court's orders concerning the issues raised
 in injunctive relief requests i-iii, above;
 - v. an order effecting a moratorium on the use of flash-
 bang grenades by MSCO officers until safe practices
 and procedures are established for their use.
- e. such other and further relief as this Court may deem appropriate.

1 DATED: July 25, 2011

HADDAD & SHERWIN

2
3 

/s/ Michael J. Haddad

4 MICHAEL J. HADDAD

Attorneys for Plaintiffs

JURY DEMAND

Plaintiffs hereby request a trial by jury.

DATED: July 25, 2011

HADDAD & SHERWIN


/s/ Michael J. Haddad

MICHAEL J. HADDAD
Attorneys for Plaintiffs